

Panaji, 8th July, 2008 (Ashada 17, 1930)

SERIES II No. 14



OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/01/2008-LAB/199

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 29-01-2008 in reference No. IT/93/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th February, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/93/2000

Ankush R. Gawas,
H. No. 70,
Al Dadem Post Naus,
Valpoi, Satari, Goa.

V/s

The Managing Director,
M/s. Automobile Corporation
of Goa Ltd.,
Honda, Sanquelim,
Satari, Goa.

... Workman/Party I

... Employer/Party II

Party I/Workman is represented by K. V. Nadkarni
(Representative).

Party II/Employer is represented by Adv. M. S. Bandoekar.

A WARD

(Passed on this 29th day of January, 2008)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 24-11-2000, has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the action of the Automobile Corporation of Goa, Limited, in terminating the services of Shri Ankush R. Gawas, Operator, with effect from 6-7-1999, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 4-6-2001 at Exb. 3. Party II filed its written statement on 11-7-2001 at Exb. 4. Party I submitted rejoinder on 16-8-2001 at Exb. 5.

3. On basis of pleadings, the then learned Presiding Officer framed issues on 27-9-2001 at Exb. 6. The issues are as follows:

1. Whether the Party I proves that the enquiry held against him is not fair and proper ?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
3. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 6-7-1999 is illegal and unjustified ?

4 Whether the Party I is entitled to any relief ?

5 What Award ?

4. The then learned Presiding Officer treated and tried the issues No. 1 and 2 as preliminary issues. The parties did not lead evidence on preliminary issues. The then learned Presiding Officer by reasoned order dated 20-1-2005 recorded findings on the issue No. 1, in the negative and on the issue No. 2, in the affirmative. He held that the domestic enquiry held against the workman (Party I) is fair and proper and that only the charge of habitual absence without leave and of committing act subversive of discipline constituting misconducts are proved against the workman. He set aside finding recorded by the Inquiry Officer that the charge of absence without leave for more than three consecutive days is proved against the workman.

5. Today parties to the reference filed terms of the settlement at Exb. 12. The terms of settlement which are signed by the parties and by their representatives and by their learned advocate respectively are read and recorded.

6. The Party I has executed receipt whereunder he has received cheque of Rs. 75,000/- (Rupees Seventy five thousand only) towards full and final settlement of his claim. The receipt is at Exb. 13.

In view of terms of the settlement (Exb. 12), I proceed to adjudicate the dispute by passing order as follows:

ORDER

- 1 The dispute under the reference is hereby adjudicated in terms of settlement (Exb. 12).
- 2 It is agreed between the parties that the Management of M/s. Automobile Corporation of Goa, Limited, shall pay a sum of Rs. 75,000/- (Rupees Seventy five thousand only) to Ankush R. Gawas by cheque No. 401816 dated 12th January, 2008 drawn on HDFC Bank, Panaji Branch which shall include all his claims arising out of employment, including claims of earned wages, bonus leave encashment etc., if any or any other claim/sum which can be computed in terms of money.
- 3 It is agreed by Mr. Ankush R. Gawas/Party I that he shall accept the amount mentioned in the clause (1) in full and final settlement of all his claims arising out of the employment, including claim of earned wages, bonus, leave encashment etc., if any or any other claim/sum which can be computed in terms of money, in complete satisfaction of all the claims made in the present reference and further confirm that he shall have no claim of whatsoever nature against the Company including any claim of reinstatement or/and re-employment.
- 4 No order as to costs.

5 The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/339

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 22-02-2008 in reference No. IT/66/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th March, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI-G O A

(Before Smt. A. Prabhudessai, Presiding Officer)

Ref. No. IT/66/2003

Smt. Lata K. Korgaonkar,
House No. EWS-701,
Near Sudhakar Flour Mill,
Housing Board Colony, Gogol,
Margao, Goa.

... Workman/Party I

V/s

The Chief Manager,
Syndicate Bank,
Varde Valaulikar Road,
Margao, Goa.

... Employer/Party II

Workman/Party I is represented by Representative
Subhash Naik.

Employer/Party II is represented by Adv. M. S. Bandodkar.

A WARD

(Passed on this 22nd day of January, 2008)

In exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government by Order dated 25-3-2003, had referred the following dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court-Mumbai-2.

"Whether the action of the management of Syndicate Bank, Margao Branch, Goa in terminating the services of Smt. Lata K. Korgaonkar, part-time sweeper w.e.f. 19-4-2002 is legal and justified?"

If not, what relief the workman is entitled for ?”

In exercise of powers conferred by Section 7-A read with sub-section (1) of Section 33-B of the Industrial Disputes Act, 1947, the Central Government by order dated 9-9-03, withdrawn the proceeding in relation to the said dispute pending before the Central Government Industrial Tribunal-cum-Labour Court No. II Mumbai and transferred it to this Tribunal for adjudication.

On receipt of the said reference a case was registered under IT/66/2003. Notices were issued to both the parties. The Party I has filed her claim statement at Exb. 6. She has stated that vide appointment letter dated 1-4-1992, she was employed with the Party II as a part-time sub-staff purely on temporary basis from 1-4-1992 to 31-5-1992 and that she was paid scale wages applicable to full time sub-staff. The Party I has stated that she continued working with the Party II even after 31-5-1992 even though no fresh appointment letter was issued to her. She has stated that she had worked continuously till 19-4-2002 and that her last drawn salary was Rs. 4,000/- per month. When she reported for work on 20-4-2002, she was issued a letter dated 19-4-2002 stating that her services were terminated.

The Party I has stated that at the time of her termination, she was neither given one month's notice nor was she paid one month's wages in lieu of notice. She was also not paid retrenchment compensation as required under the provisions of Section 25F of the Industrial Disputes Act, 1947. She has further stated that at the time of her termination the bank had also not prepared seniority list of employees and had not followed the principles "Last come first Go". She has further stated that after the termination of her services the bank engaged services of another part-time sub-staff in her place without giving her the preference. The Party I has stated that her termination is illegal and unjustified and the same is in violation of mandatory provisions of Section 25F and 25G and 25H of the Industrial Disputes Act, 1947.

The Party I has stated that she raised an Industrial Dispute vide letter dated 26-7-2002. The bank did not concede to her demand and as such she raised an Industrial Dispute before the Assistant Labour Commissioner at Vasco. No settlement could be arrived at and proceedings ended in failure on 29-10-2002 and accordingly the Assistant Labour Commissioner vide letter No. 30-10-2002 sent a report to Central Government after which the dispute came to be referred to this Tribunal.

The Party I has stated that since her termination is illegal and unjustified, she is entitled for reinstatement in service with full back wages and continuity in service.

The Party II has filed its written statement. The Party II has stated that it is a Nationalized Bank and Financial Institution, and is bound by the Government of India/Reserve Bank of India guidelines in the matter of recruitment of personnel in all categories. The Party II has stated that it had formulated guidelines for

entrustment of temporary attender duties to part-time sweepers during the leave vacancy of regular attenders. When permanent part-time sweeper, Shri Mahavir Luhera was on sanctioned leave between 1-4-92 to 31-5-92, keeping in tune with the said guidelines, the Party I was entrusted with duties of badli part-time sweeper, purely on temporary basis for a specified period from 1-4-92 to 31-5-92. The Party II has stated that in the year 1994 one regular attender from Margao Branch was transferred and since said post was not filled, the regular part-time sweeper, Mahavir Luhera was entrusted with attender duties on temporary basis from 4-1-94 to 19-4-2004 and in place of said Luhera, the Party I was discharging the duties of badli part-time sweeper purely on temporary basis. The Party II has stated that in view of the judgment of Hon'ble High Court of Madras in Writ Petition Appeal No. 615/98, the temporary attender duties entrusted to the permanent part-time sweeper were withdrawn and consequently, the badli part-time sweeper was also relieved of her duties w.e.f. 19-4-02. The Party II has stated that there was no question of termination of her service as her appointment was purely on temporary basis and for specific period. The Party II has stated that the Party I is also not entitled to benefit of Section 25F, Industrial Dispute Act, 1947. It is further stated that the retrenchment compensation is relevant only when the employment is regular and permanent.

The Party II has stated that its action is legal and justified and that it had not violated provisions of Sections 25F, 25G and 25H of the said Act, 1947. On the basis of pleadings following issues were framed:-

ISSUES

1. Whether the Party I proves that the Party II terminated her services w.e.f. 19-4-2002 in violation of the provisions of Sec. 25F, 25G and 25-H of the Industrial Disputes Act, 1947 ?
2. Whether the Party I proves that the action of the Party II in termination of her services w.e.f. 19-4-02 is illegal and unjustified ?
3. Whether the Party I is entitled to any relief ?
4. What Award ?

The matter was posted for evidence on 11-2-08, the parties submitted that they have settled the matter amicably and filed Consent Terms at Exb. 11. The terms are duly signed by the parties and their representatives. The parties have stated that the terms are acceptable to them and that the award should be passed in terms of the settlement.

I am satisfied that the said terms are in the interest of the workman and hence, the terms are taken on record and Consent Award is passed in Terms of Settlement dated 11-2-2008 at Exb. 11.

ORDER

1. It is specifically agreed by the Workman/Party I, that she shall/will unconditionally withdraw

all the legal proceedings pending before any Authority against the Party II and the present reference No. IT/66/03 shall be disposed off in view of the present consent terms before regularization of her services in the bank as per the guidelines of the bank.

- 2 It is further agreed by the Workman/Party I that, she shall produce all the necessary documents including the documents of Educational Qualifications, Birth Certificate or Proof of Birth date, Caste Certificate etc., as required by the guidelines of the bank for the purpose of regularization of her services, which is a pre-requisite for regularization.
- 3 It is agreed between the parties that in view of the above terms, the dispute in the present reference bearing No. IT/66/06 has been amicably settled unconditionally and the Party I/Workman has no claim of whatsoever nature including any claim or loss of service which can be computed in terms of money.
- 4 It is further agreed between the parties that the consent terms be filed before the Industrial Tribunal in Ref. No. IT/66/03 with the request to dispose off the said reference as amicably settled.
- 5 Upon the disposal of the reference, it is agreed between the parties that the Employer/Party II shall regularize the services of the workman, Ms. Lata Korgaonkar at Syndicate Bank, on permanent part-time basis as per bank procedure/guidelines.
- 6 No order as to costs.
- 7 The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
A. Prabhudessai,
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/147

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 08-01-2008 in reference No. IT/3/87 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 30th January, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/3/87

Hirba Vaman Cuncolienkar,
H. No. 158,
Chumal Wadda,
Marcela, Goa.

... Workman/Party I

V/s
M/s. The Goa Co-operative
Printing Press Ltd.,
Tiska,
Ponda, Goa

... Employer/Party II

Party I/Workman is represented by Adv. Bhise.

Party II/Employer is represented by Adv. L. V. Palekar.

A WARD

(Passed on this 8th day of January, 2008)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The then Lieutenant Governor of Goa, Daman and Diu, in exercise of powers conferred by Section 10(1)(d) of the said Act, 1947, under order dated 14-1-1987, has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the action of the management of M/s. The Goa Co-operative Printing Press, Tiska, Ponda, Goa, in dismissing Shri Hirba Vaman Cuncolienkar, Printer w.e.f. 31-7-1986, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I/Workman (in short the said workman) presented his claim statement on 9-4-1988 at Exb. 2. It appears from claim statement that he was appointed as a pressman on 13-12-1971 under letter dated 6-12-1971 on monthly salary Rs. 160/- in establishment of the Party II which is co-operative printing press registered under the Maharashtra Co-operative Societies Act, 1960 as applicable to the State of Goa. His appointment as pressman was on temporary basis for a period of six months. He worked to the best of his ability and without any stigma till 26-12-1984. The Party II by letter dated 26-12-1984 kept him suspended from the service on allegations that his conduct and work was affecting the press, and that, there are some other grounds which are required to be inquired into by making appointment of Inquiry Officer in due course of time. The Party II served charge-sheet against him on 5-12-1985 (the date should have been 5-2-1985). He submitted explanation on 16-2-1985 in answer to the charges levelled against him in the charge-sheet. The Party II by another letter dated 17-6-1985 informed him that he has violated

provisions contained in Rules 18, 19, 20 and in 21 of the Employees Conduct Rules. Advocate, G.V. Naik who was appointed as Inquiry Officer by the Party II conducted enquiry and held him guilty of the charges levelled against him. Based on the enquiry report submitted by the Inquiry Officer, the Party II issued notice and called him upon to show cause as to why he should not be dismissed from the service. He submitted explanation on 16-4-1986. The Party II did not satisfy with the explanation as a result the Party II terminated his services with immediate effect from 31-7-1986 under its letter of the same date. He raised Industrial Dispute before the Asstt. Labour Commissioner, Margao. Conciliation proceeding held by the Asstt. Labour Commissioner ended in failure. Therefore, the Lieutenant Governor of Goa, Daman and Diu, by order dated 14-1-1987 has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

4. According to the said workman, action of the management of the Party II is arbitrary, untenable in law and in gross violation of principles of natural justice. Termination of his services is unfair labour practice. The Inquiry Officer is one of the shareholders of the Party II and as such the Inquiry Officer was interested in the litigation. Order passed by the Inquiry Officer is not speaking order and same is illegal, perverse, null and void. Termination of his service is illegal and unjust. Therefore, by presenting the claim statement he prayed for declaration that the action of the management of Party II in terminating his services is illegal, null and void, and for reinstatement in the service with full back wages.

5. The Party II filed its written statement on 19-2-1988 at Exb. 3 and thereby resisted the claim made out by the said workman. It appears from written statement that the said workman was appointed as a pressman in establishment of the Party II till 31-7-1986, that is, till the date from which his services came to be terminated by letter of the same date. The Party II came to know in the month of December, 1984 that the said workman has committed certain acts of misbehaviour which if proved would amount to misconduct as per Service Rules framed and adopted by Board of Directors of the Party II. Therefore, the said workman was kept suspended and thereafter was served with chargesheet alongwith letter dated 5-2-1985. Adv., G. V. Naik who was appointed as Inquiry Officer was independent person. He conducted enquiry into the charges of misconduct levelled against the said workman. The enquiry was in conformity with Service Rules and by following principles of natural justice. The said workman fully participated in the inquiry proceedings. The workman was found guilty of three of the five charges, partly guilty of one of the two remaining charges, and not guilty of the remaining charge. Board of Directors considering the enquiry report took decision in its meeting dated 2-2-1986 to dismiss the said workman. Opportunity was given by letter dated 3-4-1986 to the said workman to show cause as to why punishment of dismissal should not be imposed upon him. Explanation submitted by the said workman under his letter 16-4-1986 was not found satisfactory. Therefore, the Party II terminated services of the said workman with effect from 31-7-1986. Action taken by

the Party II in terminating services of the said workman is as per Service Rules and in conformity with principles of natural justice. Termination of services of the said workman was needed in the interest of discipline and also of the Party II. The action of terminating services of the said workman is legal and justified. The said workman is not entitled to any of the reliefs claimed by him.

6. The said workman submitted rejoinder on 9-4-1988 at Exb. 4. To put in nutshell he has denied in the rejoinder all contentions which are raised by the Party II in its written statement and which are adverse to his interest. It is needless to reiterate the denials.

7. Based on pleadings of both parties, the then learned Presiding Officer framed issues on 29-4-1988 at Exb. 5. The issues are as follows:

- 1 Whether the Party II/Employer proves that a fair and impartial enquiry was held against the workman for his misconduct in breach of service rules framed and adopted by the Board of Directors as alleged ?
- 2 If so, whether Party II proves that the services of the employee were lawfully terminated after receiving the report of the Inquiry Officer as alleged ?
- 3 Whether the action of the management in dismissing the workman from service is just and proper?
- 4 Whether the action is disproportionate to the charges of misconduct even if held proved ?
- 5 What relief, if any, is the workman entitled to ?
- 6 What order ?

8. The then learned Presiding Officer who framed the above issues, treated the issues No. 1 and 2 as preliminary issues. The said workman examined himself at Exb. 6. The Party II examined on its behalf the Inquiry Officer Advocate, G. V. Naik at Exb. 9. On basis of evidence led by the parties and after hearing their respective learned advocates, the then Presiding Officer by reasoned and speaking order dated 23-4-1992 (Exb. 11) recorded findings on the preliminary issues as follows:

Issue No. 1: In the affirmative.
Issue No. 2: In the affirmative.

9. By the said order dated 23-4-1992, the then learned Presiding Officer directed the parties to proceed further on the remaining issues.

10. The then learned Presiding Officer under Award dated 23-9-1996 (Exb. 19) recorded findings on the issues No. 3 to 6 as follows:

Issue No. 3: In the negative.
Issue No. 4: Does not arise.
Issue No. 5: As per para 8.
Issue No. 6: As per order below.

11. The then learned Presiding Officer under the Award (Exb. 19) held that, action of the management of

M/s. The Goa Co-operative Printing Press Limited, Tisk, Ponda, Goa in dismissing Shri Hirba Vaman Cuncolienkar, Printer, with effect from 31-7-1986 is illegal and unjustified, and that, the workman, Shri Hirba Vaman Cuncolienkar is ordered to be reinstated with 50% of the back wages and all other consequential benefits.

12. The Party II challenged the Award (Exb. 19) by finding Writ Petition bearing No. 35/1997 in the Hon'ble High Court of Bombay at Goa. The Hon'ble High Court by order dated 24-4-1998 quashed and set aside the impugned order and remanded the matter to the Industrial Tribunal with direction to afford opportunity to the petitioner/employer as well as to the respondent No. 2, that is, to the Party I/Workman to lead evidence in support of charge of misconduct and in rebuttal respectively, and thereafter to dispose of the matter according to law. True copy of this order is on record of this reference.

13. The Party II moved the application for amendment in written statement on 14-1-1999. This application was resisted by Party I under reply dated 2-2-1999. The then learned Presiding Officer by order dated 11-3-1999 allowed the amendment application and directed the Party II to pay cost of Rs. 200/- to the Party I.

14. The Party II amended written statement and raised plea that it is engaged in social work and philanthropic activities, that, it is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, that the Party I is gainfully employed and therefore he is not entitled to any relief.

15. The then learned Presiding Officer framed additional issues on 6-4-1999 as follows:

2A: Whether the Party II proves that it is not an industry within the meaning of Section 2(j) of the I. D. Act, 1947 ?

2B: Whether the Party II proves that the Party I is guilty of the charges of misconduct ?

4A: Whether the Party II proves that the Party I is gainfully employed ?

16. The Party II succeeded in examining its Manager, P. G. Sawant. His evidence is over on 12-1-2001. In spite of giving sufficient opportunities, the Party II could not lead further evidence. On 28-3-2001 the then learned Presiding Officer on adjournment application given by learned advocate of the Party II granted opportunity to the Party II as last chance. The learned advocate of Party II filed application on 2-5-2001 for permission to withdraw his appearance. The then learned Presiding Officer by speaking reasoned order treated evidence of the Party II as closed. The Party I did not lead evidence. Submission made in this regard by learned advocate of Party I finds place in Roznama dated 2-5-2001. Learned advocates of both parties filed written arguments on 27-10-2003, and on 14-11-2003 respectively. Though there are written arguments, I heard learned advocates of both parties at length.

17. My findings on the above issues No. 2A, 2B, 3, 4, 4A, 5 and No. 6 are as follows:

Issue No. 2A : In the negative.

Issue No. 2B : In the affirmative.

Issue No. 3 : In the affirmative.

Issue No. 4 : Does not survive.

Issue No. 4A : In the negative.

Issue No. 5 : In the negative.

Issue No. 6 : As per final order.

18. *Issue No. 2A:* Section 2(j) of the said Act, 1947 defines "Industry" as follows:

"Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen."

It has come in evidence of Manager examined on behalf of Party II that the Party II carries on business of printing and binding, and imparts training to students and other poor people in this field. The trainees are paid stipend. The Party II also does work of printing and binding assigned to it by other small scale societies and undertakes work from Government Departments. The business which the Party II is running is on "no profit no loss" basis.

19. With reference to evidence of the Manager and which is reproduced above, representative of the Party II argued that the work which the Party II is doing cannot be characterized as trade or business or manufacture or calling. Therefore, according to him, the Party II cannot be said to be an industry within meaning of Section 2(j) of the said Act, 1947. In support of his argument he relied upon decisions by the Hon'ble Supreme Court in case of *Gymkana Club* and which is reproduced in para No. 47 of judgment delivered by the Hon'ble Supreme Court in case of *State of U.P. v/s Jai Bir Singh* reported in 2005 II CLR 534 and by the Hon'ble High Court of Madhya Pradesh in case between *Project Director, District, Literacy Samiti and Ms. Mamta Srivastava and another* reported in *Labour Law Journal 2006-January-P 151*.

20. The Hon'ble Supreme Court held in case of *Gymkana Club* that—

"Before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services".

21. In case of *Project Director, District Literacy Samiti* decision given by the Hon'ble Supreme Court in case of *Physical Research Laboratory v/s K. G. Sharma* reported in AIR 1997 SC 1955 is referred. In case of *Physical Research Laboratory* it was nobody's case that the Physical Research Laboratory (PRL) was engaged in

an activity which can be called business, trade or manufacture. Neither from nature of its organization nor from nature and character of the activity carried on by it, can it be said to be an undertaking analogous to business or trade. It was not engaged in a commercial industrial activity and it was not an economic venture or commercial enterprise as it was not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It was more an institution discharging Governmental functions and domestic enterprise than a commercial enterprise. Therefore, the Hon'ble Supreme Court held that the PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs as ordinarily understood. The Hon'ble Supreme Court ultimately came to conclusion that the workmen of the PRL are not the workmen because PRL is not an industry.

22. In case between *Project Director, District Literacy Samiti and M/s. Mamta Srivastava and another* the petitioner samiti was only promoting the scheme to eradicate illiteracy. It was nobody's case that the petitioner-samiti is engaged in an activity which can be called business, trade or manufacture. On going through the scheme the Hon'ble High Court of Madhya Pradesh observed that, it cannot be gathered that the activity carried out by the petitioner-samiti can be said to be an undertaking analogous to business or trade. The Hon'ble High Court held that the petitioner-samiti is not an industry and the respondent cannot be said to be workman within the meaning of Industrial Disputes Act, 1947.

23. Facts of the reported case of *Project Director, District, Literacy Samiti* referred to above are different from that of the present one. With respect I am of the opinion that, decision from this reported case will not be helpful to representative of Party II. It becomes apparent from evidence of the manager examined by the Party II that, after training is completed the trainees are given employment in press of the Party II. In addition to imparting of training to students and other poor people in printing and binding, the Party II does work of printing and binding assigned to it by other small scale societies and undertakes work from Government departments. He pointed out in his cross examination that these Government departments are Sales Tax, Education and Handicraft. The Party II undertakes printing work from Goa University. The customers are charged as per cost of paper used for printing, composing charges, type setting charges, printing charges and binding charges including those of labour. Near about 90 co-operative societies are members of Party II. To become member of the Party II each of these co-operative societies purchases shares each of Rupees 25/- and pays entrance fee Re. 1/-. He has

produced xerox copies of balance sheets for the year 1984, 1986, 1988 and for the year 1990. Xerox copies of the balance sheets produced at Exb. 6, colly, go to show that the Party II has gained profit during these financial years. Considering all the activities which are being carried out by the Party II and relying upon observations made the Hon'ble Supreme Court in *Gymkana Club* case, alluded supra, the best possible conclusion which can be drawn is that the Party II is an industry within the meaning of Section 2(j) of the said Act, 1947. The plea raised by the Party II that it is not the industry, is devoid of merits and as such it must fall to the ground. I do not agree with argument advanced by representative of the Party II. I, therefore, answer the issue in negative.

24. *Issue No. 2B:* Record of enquiry proceeding is produced at Exb. 10. Xerox copy of charge sheet is at Exb. E-1. It appears from the charge sheet that the charges levelled against the Party I are as follows:-

- 1 He was deliberately and intentionally doing work slowly.
- 2 He was causing interference in the work of co-workers and was instigating the co-workers to be slow in their work.
- 3 He was insulting and was using abusive language to his superiors.
- 4 He was behaving arrogantly and indecently, and lastly.
- 5 He was not maintaining record of work done by him.

25. To prove the above charges there is evidence of the Manager alone, who is examined by the Party II. He supported in his evidence that the Party I was not doing his work properly and was instigating other workers not to do work. Kashinath Zambouni, the Clerk, had made complaints against the Party I on 15-10-1984 and on 24-12-1984 to Chairman of the Party II. Xerox copies of the complaints are at Exb. A-3 colly. Manila Popkar who is the Asstt. Manager had made complaint against the Party I on 18-12-1984. Xerox copy of the complaint is at Exb. E-4. The Party I abused the Asstt. Manager on 18-12-1984 at about 9.30 a.m. in his presence. Ashok Chiktnis who was working as Printer, made complaint on 24-12-1984 alleging that the Party I was not allowing him to run machine and that the Party I applied oil to belt of the printing machine and put off starter. Xerox copy of this complaint is at Exb. E-5. On receiving complaints he went for inspection and found that there was oil on belt of the machine and nuts and bolts of cutting machine were loosened.

26. Representative of the Party II argued that if evidence of the General Manager coupled with xerox copies of complaints is taken into consideration, the evidence will certainly prove that the Party I is guilty of such misconduct which ultimately resulted into hampering press work of the Party II. There is no

evidence in rebuttal by the Party I. Therefore, according to him, evidence of the Manager can safely be accepted to prove misconduct committed by the Party I.

27. To counter argument advanced by Representative of the Party II, learned advocate of Party I argued that evidence of the Manager is not sufficient and convincing. The fact that the Party I did not lead evidence in rebuttal will not come in aid of the Party II to prove misconduct against the Party I. Therefore, in his opinion, it will not be safe and correct to accept evidence of the solitary witness examined by the Party II.

28. It is true that the Party I did not lead evidence in rebuttal. It should be remembered that the Party raising a particular plea must stand on its own legs to prove that particular plea. If evidence of the Manager is found sufficient and satisfactory, then and then only, the fact that the Party I did not lead evidence rebuttal will be additional circumstance in favour of the Party II.

29. The Party II had examined three witness by name Manilal Popkar, Ashok Chetnis and Kashinath Zambouni. The Party II could not examine any of these witnesses to prove charge of misconduct against the Party I in the proceeding in hand, after the matter is remanded because none of them is in its employment. This fact is disclosed by the Manager in his evidence before this Industrial Tribunal. Under this circumstance it reveals that, there was no alternative for Party II but to examine the Manager on its behalf. The Manager was not cited as a witness in the charge-sheet not he is examined in the enquiry against the Party I. This has been fairly admitted by representative of the Party II during course of his argument. Being the Manager he must be aware of the situation. The enquiry held against the Party I is proved to be fair and impartial. Evidence of the Manager supported by the xerox copies of the complaints produced at Exb. E-3 colly, two in number, at Exb. 4 and at Exb. 5 of which reference is made earlier appears to be probable, convincing and trustworthy. His evidence sufficiently proves that the Party I is guilty of misconduct. The Party I did not lead evidence in rebuttal which leads to inference that he did not want to submit himself for cross examination on the question of misconduct. This is additional circumstance in favour of the Party II. I, therefore, accept evidence of the Manager. My answer to the issue is in affirmative.

30. *Issue No. 3:* The Party II dismissed the Party I from service with effect from 31-7-1986. Xerox copy of letter whereunder the Party I is dismissed from the service is at Exb. E-2. Misconduct proved against the Party I is of such a nature which was causing obstruction in printing work of the Party II and which was against the discipline required to be maintained in business office.

It reveals that even after the complaint made against him for the first time he did not care to improve himself. He has committed such acts of misconducts which are certainly detrimental to interest of the Party II where he was working to earn for bread and butter. Considering nature of the misconduct proved against him he deserves to be punished by way of dismissal from the service. I, therefore, answer the issue in affirmative.

31. *Issue No. 4:* It is proved that action of the management of the Party II is dismissing the Party I from the service is just and proper. I, therefore, hold that this issue does not survive.

32. *Issue No. 4A:* The Party II by making amendment in written statement pleaded in para No. 11-A that the Party I is gainfully employed and that therefore the Party I is not entitled to any relief. Evidence of the Manager examined by the Party II is totally silent in this regard. It follows that there is no evidence in support of the pleading. I, therefore, answer the issue in negative.

33. *Issue No. 5:* The Party I is dismissed from the service for the acts of misconduct after holding departmental enquiry. The dismissal is proved to be just and proper. Such dismissed workman is not entitled to any of the reliefs. I, therefore, answer the issue in negative.

As a result of findings given to the issues No. 1, 2, 2B, 3 and to issue No. 5, it will have to be adjudicated that the action of the management of the Party II in dismissing the Party I/Workman with effect from 31-7-1986 is legal and justified, and that, the Party I/Workman is not entitled to any relief. With this, I conclude the Award by passing Order as follows:

ORDER

- 1 It is hereby adjudicated that action of the management of M/s. The Goa Co-operative Printing Press Limited, Tisk, Ponda, Goa (Party II), in dismissing Shri Hirba Vaman Cuncolienkar, Printer (Party I) w.e.f. 31-7-1986, is legal and justified.
- 2 It is hereby adjudicated that the workman (Party I) is not entitled to any relief.
- 3 No order as to costs.
- 4 The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.